

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN**

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IN RE: SUBWAY FOOTLONG SANDWICH )  
MARKETING AND SALES PRACTICES LITIGATION ) No. 2:13-md-2439  
)  

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THIS DOCUMENT RELATES TO ALL CASES

**SECOND SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFFS'  
UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs Nguyen Buren, John Farley, Vincent Gotter, Barry Gross, Jason Leslie, Ayanna Nobles, Charles Noah Pendrak, Andrew Roseman, Richard Springer, and Zana Zeqiri (“Plaintiffs” or “Class Representatives”) hereby submit this second supplemental memorandum further addressing the perceived Fed. R. Civ. P. 11 infractions raised by Objector Theodore Frank, relating to Plaintiffs’ unopposed Memorandum in support of final approval (“Memorandum”) (Docket Entry 54). Plaintiffs initially addressed these issues in a Supplemental Memorandum filed with the Court on January 7, 2016 (Docket Entry 57).

In light of Plaintiffs Supplemental Memorandum, Mr. Frank’s counsel has identified two issues that he claims still violate Rule 11. First, he contends that Plaintiffs’ Memorandum should not have quoted the Koz opinion, 2013 U.S. Dist. LEXIS 129205, because it was “replaced by” another opinion. Second, he contends that Plaintiffs’ Memorandum incorrectly states that Mr. Frank was involved in the Hamilton v. SunTrust Mortgage case. See Exhibit 1 (January 7, 2016 letter from Adam Schulman, Esq.). Plaintiffs continue to believe that the contentions of Mr. Frank and his counsel are entirely meritless, and that neither of these statements violate Rule 11.

Notwithstanding the above, in an effort to preclude further litigation and the expenditure of time and effort by counsel and this Court on this issue, and to obviate the need for motion

practice, Plaintiffs hereby withdraw both of the objected-to statements in their Memorandum, specifically:

- The statement on p. 8 of the Memorandum that provides:

“For example, in *Koz v. Kellogg Co.*, 2013 U.S. Dist. LEXIS 129205, \*11, 2013 WL 4834805 (S.D. Cal. Sept. 10, 2013), the district court noted:

**“In this light, the Court notes that present objectors' counsel, Darrell Palmer and Theodore Frank of the Center for Class Action Fairness, have both been widely and repeatedly criticized as serial, professional, or otherwise vexatious objectors.”** (emphasis added)

and

- The inclusion of the case “Hamilton v. Suntrust Mortgage Inc et al, 13-cv-60749 (S.D.FL)” on p. 10 of the Memorandum as one of the approximately 30 cases in which Mr. Frank participated either as an objection or as an attorney for an objector.

Plaintiffs believe that these minor changes will have no impact on the Court’s pending decision regarding the adequacy of the proposed settlement in this case, but acknowledge that this second supplement – when combined with the initial supplement – could create some confusion. If the Court wishes Plaintiffs to re-file their Memorandum in support of final approval incorporating all of the changes set forth in the supplements, Plaintiffs will of course do so.

Respectfully submitted,

All Plaintiffs, individually, and on behalf of all others similarly situated,

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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document was filed electronically and served by e-mail to all parties by operation of the Court's electronic filing system this 26<sup>th</sup> day of January, 2016. Parties may access this filing through the Court's CM/ECF System.

s/ Stephen P. DeNittis  
Stephen P. DeNittis